

WHAT IS ALL THE “RUCKUS” ABOUT THESE SHORT-TERM RENTALS: I OWN THE PROPERTY?



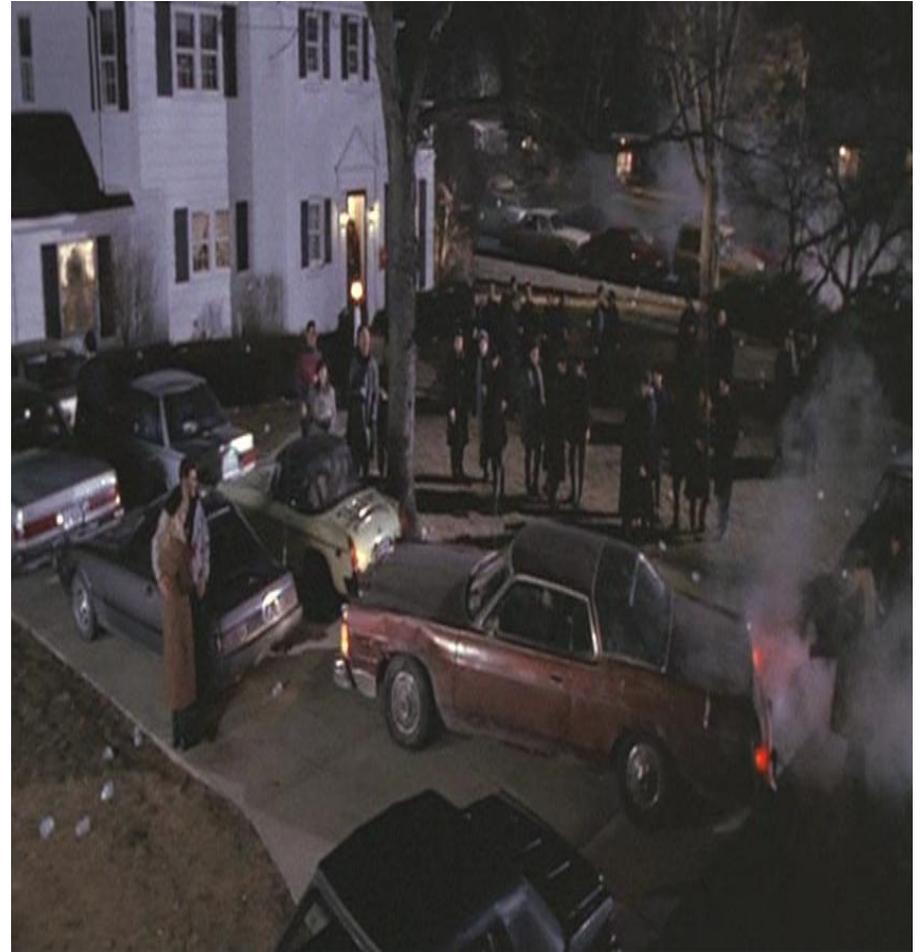
Cultural Revolution

- What is this “Sharing Economy” Anyway?
- Assets or Services rented to others.
- Individuals shop for and rent cars, homes, bedrooms, tools, specialty equipment, and other individual owned assets or services from others.
- Excellent Examples: Uber and Short-Term Rentals.

Sharing Economy

- Short-term rental locations offer a digital marketplace where property owners can rent their:
 - ❖ Home
 - ❖ Guesthouse
 - ❖ Even Spare Rooms
- Homeowners reap financial windfall.
- Cities deal with potential negative consequences.

Who Knew Their Was an Uncle Buck?



Without Uncle Buck Enforcement, Cities View Municipal Concerns

- Airbnb declares they operate a personal service not subject to zoning.
- Hotel industry counters that Airbnb's are commercial, operating illegally without same restrictions as hotels and bed and breakfasts.
- Definitions:
 - ❖ **Hotels** offer guest services for several or hundreds of separate rooms in facility usually with full staff of professionals to offer a range of services.
 - ❖ **Beds and Breakfasts** offer a more personalized service with a smaller number of rooms and guest services, and the homeowner is normally present during the stay.
 - ❖ **Short-term rentals** offer a single residential unit (apartment, house or room), often without any guest services, and the property owner may be absent from the premises.

Municipalities Field “Pop Up Fly Ball” Issues



1. Leasing for a Set Time Period

- ❖ Distinguish between short-term rentals and long-term rentals.
- ❖ Texas ordinances address short-term rentals using “fewer than 30 days”.
- ❖ Texas Comptroller’s Office charges 6% state hotel occupancy tax for sleeping accommodations used for “fewer than 30 days”.

“Pop Up Fly Balls”

2. “Owner Occupancy” or “Owner Presence” Required

- ❖ Residential Neighborhoods *Pitch* with the most *Heat*.
- ❖ Why? Transient strangers are not invested in quality of life in the neighborhood.
- ❖ “Owner Occupancy” means the host must show proof of room occupancy. For instance, Austin requires the owner to occupy the residence for at least 51% of the time.
- ❖ “Owner Presence” means the host must be physically present in the residence.

“Pop Up Fly Balls”

3. Inspections and Licenses

- ❖ Building and Fire Codes are Major Life Safety Concerns.
- ❖ Restrictions include structure’s integrity, regulating fire escapes, occupancy usage, and nuisance-type activities.
- ❖ Neighborhood integrity for quality of life activities are needed more in some communities than others.
- ❖ Austin and San Antonio Ordinances respond to their communities as they desire **restrictions** to preserve neighborhood integrity.
- ❖ Grapevine’s Ordinance **bans** short-term rentals in response to their community’s desire to preserve neighborhood integrity.
- ❖ Other Texas cities take short-term rental complaints on a case by case basis, allowing their presence **absent restriction** in response to their communities’ input.

“Pop Up Fly Balls”

4. Insurance

- ❖ Adequate property and liability insurance is needed for hosts and renters.
- ❖ Homeowners’ and renters’ insurance policies may exclude most, if not all, liability arising from the insured using property for commercial purposes.
- ❖ Airbnb expanded their primary insurance for all losses to cover this possible exclusion.
- ❖ Some cities allow Airbnb’s coverage to count for the insurance required.

“Pop Up Fly Balls”

5. Hotel Occupancy Tax (HOT) Collections

- ❖ Short-term rentals are subject to HOT collections.
- ❖ Texas Comptroller’s Office charges 6% state hotel occupancy tax for short-term rentals’ sleeping accommodations.
- ❖ Cities may charge a hotel occupancy tax for short-term rentals, however, collecting the amount owed is a challenge without some kind of collection mechanism.
- ❖ Some cities require the proof of short-term rental owners’ payment of hotel occupancy taxes before a license is issued and/or such license may be revoked for nonpayment.
- ❖ Airbnb works with some cities to assure remittance of such taxes.

Why Should Cities Be Concerned With Neighborhood Integrity?



Do We Care What Activities Our Neighbors Do?



AUSTIN TAKES HIT FOR THE TEAM

- Austin's Controversy
 - ❖ City Council listens to community.
 - ❖ Public review and negotiation process ended with compromises, including differentiating between owner-occupied and non-owner-occupied short-term rentals.
 - ❖ By legalizing short-term rentals, the City could track, regulate, and capture previous lost tax revenues.
 - ❖ The non-owner-occupied short-term rentals, "Type 2 STR's," had a distance regulation between short-term rentals not occupied.
 - ❖ "Type 2 STR's" ultimately will phase out beginning April 1, 2022.

ORDINANCE SHORT-TERM RENTAL RESTRICTIONS

1. Licensing Requirement Examples:

- ❖ Property owner/manager contact information.
- ❖ Proof of Certificate of Occupancy or third party life safety inspection.
- ❖ Limits, by census tracts, on percentage of short-term rentals in residential and commercial areas.

ENFORCEMENT TOOLS

2. Enforcement tools, such as the following were used:
 - ❖ Occupancy limit-no more than 10 adults, 6 unrelated.
 - ❖ Regulations for noise, i.e., sound equipment and live music.
 - ❖ Ban on advertising for unlicensed short-term rentals.
 - ❖ Prohibition of outdoor assemblies-10 p.m. to 7 a.m.
 - ❖ Ban on commercial events, i.e., weddings, bachelor parties, etc.
 - ❖ Authority to suspend or deny licenses.

OPPOSITION TRIES TO STEAL FIRST BASE

Texas Public Policy Foundation (TPPF) files lawsuit against the City of Austin claiming:

1. **Right to Privacy** – Broad restrictions on group activities after 10:00 p.m. violates Right to Privacy. They claim occupancy and noise complaints are not a compelling threat to public safety.
2. **Freedom of Assembly** – Plaintiff's assert same restriction as above is not narrowly tailored to meet a compelling state interest.
3. **Substantive Rights under Due Course of Law Clause** –
 - ❖ Right to Economic Liberty and Private Property;
 - ❖ Right to Freedom of Movement;
 - ❖ Ultra Vires Acts;
 - ❖ Equal Protection; and
 - ❖ Unreasonable Warrantless Searches.

ATTORNEY GENERAL INTERVENES

1. Attorney General Ken Paxton intervenes in support of TPPF, attacking Austin's Ordinance on virtually all provisions.
2. Supporting TPPF's allegations, he alleges that the City's Ordinance also exceeds the City's constitutional power to zone property.
3. He seems to focus on the City's Ordinance constituting an unconstitutional regulatory taking of property under both state and federal law, depriving the property owner of their reasonable use and investment-backed expectations.

AUSTIN'S ORDINANCE GETS A FIRST BASE HIT

- The City of Austin pursues their belief that the restrictions stated in their Ordinance are reasonable and necessary for their community.
- The City filed a no evidence motion for summary judgment arguing among other things that the Plaintiffs could not prove an injury, since the property values were not affected.
- Trial Judge granted the motion, and this case is on appeal.

THE TEXAS EXPERIENCE

STRIKE ONE!

Village of Tiki Island v. Ronquille, 463 S.W.3d 562 (Tex. App.-Houston [1st Dist.] 2015, no pet.):

- ❖ A small incorporated village outside Galveston adopted an Ordinance prohibiting short-term rentals.
- ❖ Property owners filed a lawsuit arguing the Ordinance was a regulatory taking of their property prohibiting an act that had been **allowed for at least 20 years**.
- ❖ The Trial Court issued a temporary injunction against the Village, holding the Plaintiff had a reasonable investment-backed expectation that a property owner could engage in short-term rentals.
- ❖ Appellate Court affirmed the Trial Court ruling on interlocutory appeal.

STRIKE TWO!

Friedman v. Rozzlle, 2013 WL 6175318 (Tex. App. – Corpus Christi 2013, pet. denied):

- ❖ A property owner at Sun Harbour Cottages in Rockport sought a declaration against the property owners' association that the restrictive covenant which prohibited short-term rentals not be enforced.
- ❖ At the summary judgment hearing, the evidence showed that homeowners used their cottages for short-term rentals for the **last 10 years**.
- ❖ Trial Court stated the evidence showed the violations of the covenant were extensive and material, and therefore, the homeowners' acquiesced in allowing violations and waived the right to enforce it.
- ❖ Appellate Court affirmed the decision stating the restriction prohibiting short-term rentals was void.

STRIKE THREE!

Zgabay v. NBRC Property Owners' Association, 2015 WL 5097116 (Tex. App. – Austin 2015, pet. denied):

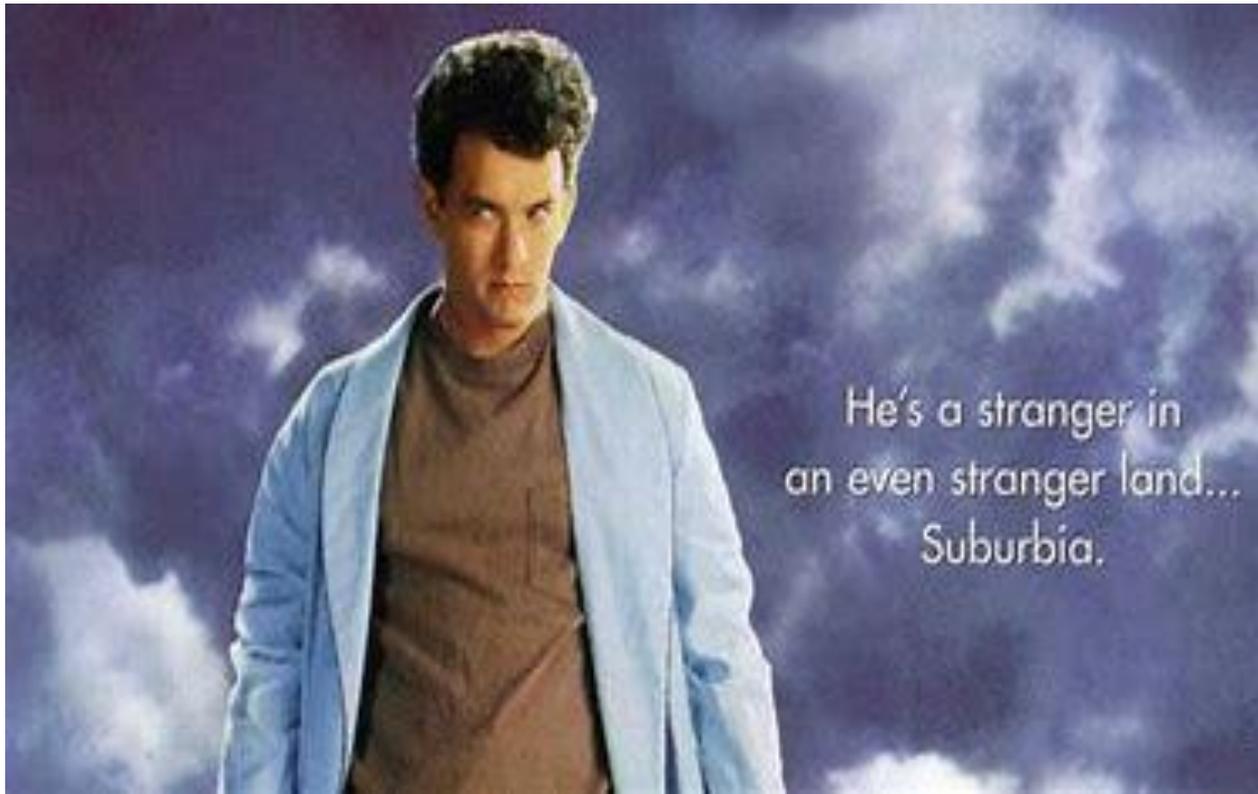
- ❖ At trial, the Plaintiff sought declaratory relief stating restrictive covenants prohibiting short-term rentals should not be enforced. The Trial Court disagreed.
- ❖ The Court of Appeals in Austin used the statutory rules of construction to interpret the restrictive covenants in question on appeal.
- ❖ The Appellate Court reversed the Trial Court interpreting a “single family residential purpose,” under contract rules of construction, was allowed within the covenants, and the lack of time limits rendered the covenants ambiguous.
- ❖ Definitions are *important*.

OUT!

Tarr v. Timberwood Park Owners Association, 556 S.W.3d 274 (Tex. 2018):

- ❖ Texas Supreme Court overruled the previous courts, concluding that the “single-family” restriction spoke only to the structure, not the use.
- ❖ Using the rules of contract construction, the Court offered definitions of “residential purposes” and “commercial or business purposes,” which were not defined in the Association’s business use restrictions.
- ❖ When drafting short-term rental restrictions, this case shows that definitions are important to the construction of those regulations.

“THE BURBS” NEIGHBORHOOD WILL BE PROTECTED!



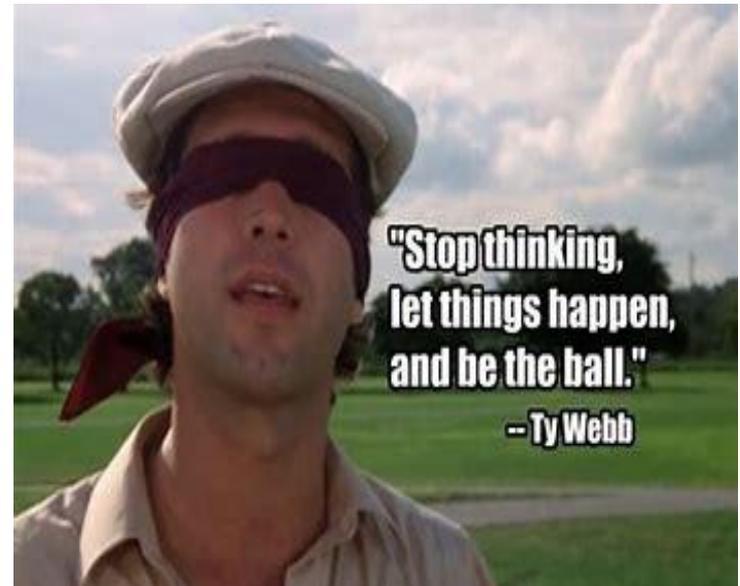
NORMAL NEIGHBORHOOD FAMILIES?



TEXAS LEGISLATURE

Both the 85th Texas Legislature and 86th Legislature addressed short-term rentals with bills preempting cities from regulating such rentals to prohibiting certain municipal actions regarding these rentals.

What's next?





**CITY ATTORNEY'S AFTER FIGHTING THE
"GOOD FIGHT"**

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